# In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 70-333

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 189, PETITIONER

*v.*

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT*

## BRIEF FOR THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION IN OPPOSITION

### OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 438 F.2d 408. The opinion of the district court (Pet. App. E) is reported at 311 F. Supp. 468.

### JURISDICTION

The judgment of the court of appeals was entered on February 3, 1971. The Union's petition for rehearing and suggestion for rehearing *en banc* was denied on March 30, 1971. EEOC's motion for clarification of opinion and alternative motion for rehearing were also denied on March 30, 1971. The petition for a writ



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of certiorari was filed on June 25, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTION PRESENTED

Whether Section 706(i) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–5(i), gives EEOC the authority to seek to compel compliance with an earlier order issued by a federal district court in an action brought by a private individual to enjoin employment discrimination, by seeking a supplementary order requiring defendants to take further action to comply with the court's earlier order, where the court had tentatively found defendants to be in compliance with that order.

## STATUTE INVOLVED

The relevant provisions of Title VII of the Civil Rights Act of 1964 are set forth at page 3 of the petition.

## STATEMENT

On May 18, 1968, Gwylard Locke filed a class action, pursuant to Section 706(e) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e–5(e), against the petitioner union and respondent Mechanical Contractors Association of Central Ohio, Inc. (hereinafter the Contractors), alleging that the job referral procedures established under the collective bargaining agreement between the Union and the Contractors denied equal employment opportunity to blacks. On May 29, 1968, the district court accepted a settlement agreement and issued an order requiring, *inter alia,* that petitioner and the Contractors renegotiate their collective bargaining agreement "for the sole purpose of assuring compliance with Title VII * * *" and

that they submit the renegotiated agreement to the court for approval (Pet. App. 63). The court retained jurisdiction to enforce its order (*ibid.*). After renegotiation, the collective bargaining agreement was approved by the court on September 30, 1968, "as appearing to be in compliance with title VII of the Civil Rights Act of 1964" (Pet. App. 65).

The present proceedings were initiated by a "Petition to Show Cause and for Other Relief" filed by EEOC pursuant to Section 706(i) of Title VII, 42 U.S.C. 2000e–5(i). EEOC contended that the renegotiated agreement did not meet the requirements of Title VII, and petitioned the court for a supplementary order requiring a further modification of the agreement to bring it into compliance. The court entertained the petition and, after the Union filed an answer, EEOC moved for summary judgment, which the court granted on April 14, 1970. The court found that certain provisions of the renegotiated agreement, as EEOC contended, had the effect of perpetuating past discriminatory practices and were, therefore, illegal under Title VII. Consequently, the court held that the Union and the Contractors had not complied with the court's order of May 29, 1968, requiring renegotiation of the contract to comply with Title VII. The court, therefore, ordered the Union and the Contractors to renegotiate the agreement with specific provisions eliminating certain test, experience, and age requirements. (Pet. App. 54–55.) The Union appealed.

The court of appeals sustained EEOC's authority to bring the action, holding "that this is an appropriate proceeding 'to compel compliance' with the District

Court order in the *Locke* case (42 U.S.C. § 2000e–5(i)) and that the District Court had both jurisdiction and power to enter the supplementary order here appealed from" (Pet. App. 26). However, the court ruled that because there was genuine dispute regarding some of the facts, summary judgment was inappropriate; accordingly, it vacated the judgment and remanded the case for a hearing (Pet. App. 27).

## ARGUMENT

Petitioner contends that EEOC, in seeking from the court a supplementary order restructuring the collective bargaining agreement to comply with Title VII, went beyond its authority under 42 U.S.C. 2000e–5(i). That Section, however, gives EEOC, without qualification, power to commence proceedings to compel compliance with previous court orders. Title VII of the Civil Rights Act of 1964 is the product of a legislative compromise which denied the Commission power to initiate lawsuits to enforce the provisions of the Title, and vested such power in private individuals (Section 706(e), 42 U.S.C. 2000e–5(e)) and, in certain circumstances, in the Attorney General (Section 707, 42 U.S.C. 2000e–6).[1] The Commission's primary function under the Title is the investigation of complaints by persons claiming to be aggrieved, and the settlement of cases determined to be meritorious with a view toward obtaining voluntary compliance. Section

[1] The relevant legislative history is sumarized in *Miller* v. *International Paper Co.*, 408 F. 2d 283, 286 (C.A. 5). See also *Pettway* v. *American Cast Iron Pipe Co.*, 411 F. 2d 998, 1005 (C.A. 5).

706(a), 42 U.S.C. 2000e–5(a). The legislative compromise, however, expressly conferred on the Commission in Section 706(i) the power to initiate judicial proceedings to compel compliance with court orders issued in suits commenced pursuant to Section 706(e).

The enforcement power thus vested in the Commission is an essential component of the statutory scheme. Since Title VII actions by definition attack discrimination directed against a particular class of persons (here, a racial class), the relief secured inevitably benefits all members of the class, and not merely the individual plaintiffs. *Jenkins* v. *United Gas Corp.*, 400 F.2d. 28, 32–33 (C.A. 5). A plaintiff, however, having once matched his individual resources against those of an institutional defendant, is often not prepared to assume the additional burden of policing compliance.[2] Furthermore he has little incentive to do so where the interests of the class are affected by a violation of the order he has secured, but his personal interests are protected. Cf. *Jenkins* v. *United Gas Corp., supra,* at 33. Therefore proceedings brought by the Commission under Section 706(i) often provide the only effective means of enforcing class relief previously granted under Title VII—and this is the apparent reason why Congress conferred the enforcement authority on the Commission. Cf. *Hall* v. *Werthan Bag Corp.*, 251 F. Supp. 184, 186–187 (M.D. Tenn).

In the present case, the district court initially

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[2] Title VII cases have been characterized as an economic "David and Goliath confrontation." *Pettway* v. *American Cast Iron Pipe Co., supra,* at 1005.

ordered renegotiation of the collective bargaining agreement to comply with Title VII, and subsequently gave tentative approval to the renegotiated agreement, while retaining continuing jurisdiction of the cause. EEOC then filed a motion alleging that the newly executed agreement failed to meet the requirements of the statute and urging that it be modified to comply with Title VII, as the court had originally ordered. The proceeding instituted by EEOC was properly regarded, by both the court of appeals and the district court, as an action to compel compliance with the district court's original order. The action brought by the private plaintiff was a class action, requiring the extension of relief beyond the situation of the named complainant (who in this case was apparently made whole by the court's original order), and EEOC properly urged upon the court the need to grant fuller relief for the entire class in order to effectuate the intent of the original order. Indeed, EEOC's action under 42 U.S.C. 2000e–5(i) was especially appropriate here since the district court had given only tentative approval to the agreement and had retained jurisdiction.[3]

Petitioner argues (Pet. 9–10) that, notwithstanding the unqualified language of the statute, Congress

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[3] Petitioner also argues that EEOC's failure to join the named complainant in the proceeding made the compliance proceeding an independent action unauthorized by 42 U.S.C. 2000e–5(i). Nothing in that Section, however, requires EEOC to exercise its enforcement function through, or in connection with, the original complainant. Rather, all that is required is that there be a pre-existing order which EEOC seeks to effectuate.

intended to authorize the Commission only to bring contempt proceedings. In the absence of clear evidence to the contrary,[4] however, it should be presumed that Congress intended to confer on the Commission the authority to enforce court orders by any means appropriate in the particular circumstances. Cf. *Federal Trade Commission* v. *Dean Foods Co.* 384 U.S. 597, 608. And certainly a remedy less harsh than that of contempt is in keeping with the remedial, non-punitive nature of Title VII. See *Robinson* v. *Lorillard Corp.*, C.A. 4, Nos. 15,098 and 15,099, decided July 1, 1971, slip op. pp. 26–28. Moreover, if the Commission cannot maintain actions to compel compliance other than contempt proceedings, the burden of doing so, which the Union characterizes as heavy (Pet. 12), must rest on private individuals. Surely this would be contrary to the congressional judgment expressed in Section 706 (i) that, having once secured relief, private individuals should not have to expend their resources to police the enforcement of that relief.

Petitioner also contends that failure to construe 42 U.S.C. 2000e–5(i) to limit EEOC to the institution of contempt proceedings will compromise the Attorney General's Title VII enforcement powers. Once again, however, EEOC does not contend that it has

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[4] Petitioner relies on a short statement by Senator Dirksen (Pet. 10). That statement, however, appears merely to provide an example, rather than to define the scope of the Commission's authority under Section 706(i). See 110 Cong. Rec. 12724 (remarks of Senator Humphrey).

the power to initiate Title VII actions; it recognizes that its enforcement prerogatives must be premised on pre-existing litigation.

Petitioner does not here challenge on its merits the relief granted by the district court. Instead, petitioner contends that under 42 U.S.C. 2000e–5(i) EEOC is not a proper party to seek the relief and, therefore, the court was without jurisdiction to act on the EEOC motion. In our view, EEOC, in instituting the compliance proceedings, acted not only within the authority granted it by the clear language of the Act, but also in accord with the fundamental remedial purpose of Title VII to provide the full measure of relief under the statute to the victims of unlawful discrimination. Cf. *Sanchez* v. *Standard Brands, Inc.*, 431 F.2d 455 (C.A. 5); *Miller* v. *International Paper Co.*, 408 F.2d 283 (C.A. 5); *Choate* v. *Caterpillar Tractor Co.*, 402 F.2d 357 (C.A. 7).[5]

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[5] Petitioner's contention that there is a conflict between the decision below and the decisions of other circuits is without merit. This case is the first in which EEOC has sought to compel compliance with an order issued in a prior private action. While it is true that the Fifth Circuit, in several cases cited by petitioner (Pet. 11), has remarked in dicta that EEOC is without enforcement powers, none of those cases involved situations in which EEOC was seeking, under Section 706(i), to compel compliance with a court order issued in a private action.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
*Solicitor General.*
DAVID L. NORMAN,
*Acting Assistant Attorney General.*
DAVID L. ROSE,
EILEEN M. STEIN,
*Attorneys.*

STANLEY HEBERT,
*General Counsel,*
JOHN DE J. PEMBERTON, JR.,
*Deputy General Counsel,*
JULIA P. COOPER,
CHARLES L. REISCHEL,
*Attorneys,*
*Equal Employment Opportunity Commission.*

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